

MISSOURI COURT OF APPEALS WESTERN DISTRICT

JOE BOB LAKE, APPELLANT,

v.

FRANK B.W. MCCOLLUM, RESPONDENT.

DOCKET NUMBER WD66670
**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 31, 2009

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE KENNETH P. DEAN II, JUDGE

Appellate Judges:
Division One: Alok Ahuja, P.J., Thomas H. Newton, C.J., and Harold L. Lowenstein, J.

Attorneys:
Michael W. Lerner, Overland Park, KS, **for appellant.**

Michael D. Moeller, and Michael J. Kleffner, Kansas City, MO., **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS – WESTERN DISTRICT

JOE BOB LAKE,

APPELLANT,

V.

FRANK B.W. MCCOLLUM,

RESPONDENT.

WD66670

Jackson County

Before Division One Judges: Alok Ahuja, P.J., Thomas H. Newton, C.J., and Harold L. Lowenstein, J.

While experiencing a severe migraine headache, Julia Lake visited her regular physician, Dr. Sharon Prohaska. During the visit, an injection consisting of a combination of the drugs Nubain and Vistaril was administered to attempt to alleviate Julia's migraine pain. After receiving the shot, Julia experienced convulsions and fainted in the restroom at Dr. Prohaska's office, striking her right shoulder on the bathroom sink.

Julia and her husband, Appellant Joe Bob Lake, sued Dr. Prohaska for medical malpractice. Lake contended that Dr. Prohaska's authorization of the administration of Nubain and Vistaril constituted malpractice because of Julia's previous, severe adverse reaction to that precise combination of drugs (at lower doses) just a few months earlier, as well as Julia's specific instructions to never be administered that combination of drugs again.

After the jury found in Lake's favor, the trial court granted a judgment notwithstanding the verdict ("JNOV") to Dr. Prohaska on the grounds that: (1) Lake had failed to define the applicable standard of care in his questioning of his medical expert witness; and (2) Lake had failed to present evidence to support a jury finding that he sustained non-economic damages as a direct result of Dr. Prohaska's alleged negligence.

REVERSED AND REMANDED FOR ENTRY OF JUDGMENT ON THE JURY'S VERDICT.

Division One holds:

In his first Point on appeal, Lake argues that the trial court erred in granting Dr. Prohaska's JNOV motion because, contrary to what the trial court held, Lake's medical expert properly defined the applicable standard of care. We agree. Although Lake's medical expert's testimony did not precisely parrot the words of the approved jury instruction on the issue, under *Hickman v. Branson Ear, Nose & Throat, Inc.*, 256 S.W.3d 120 (Mo. banc 2008), it was sufficient to support the jury's finding that Dr. Prohaska's actions fell below the standard of care that would have been exercised by similarly-situated physicians who practice in her medical specialty, in the circumstances Dr.

Prohaska faced.

In his second Point, Lake contends that the trial court erred in granting JNOV in Dr. Prohaska's favor because Lake presented sufficient evidence from which the jury could find that Dr. Prohaska's negligence proximately caused Lake's noneconomic damages. We agree. Taken in the light most favorable to Lake, his expert testimony and the other evidence he presented supported the jury's finding that, but for Dr. Prohaska's negligence in the administration of the Nubain/Vistaril shot, Julia would not have fainted, and therefore would not have suffered the injury to her shoulder when she fell against the bathroom sink in Dr. Prohaska's office, or incurred her resulting non-economic damages. As a result, the trial court erred in granting JNOV in Dr. Prohaska's favor on the basis that Lake failed to establish causation.

Opinion by: Alok Ahuja, Judge

July 31, 2009

<p>THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.</p>
